

# **Exhibit # 1**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
EASTERN DIVISION

IN RE:

NEW ENGLAND COMPOUNDING  
PHARMACY, INC.,

Debtor.

Chapter 11

Case No. 12-19882-HJB

~~PROPOSED~~ ORDER ON MOTION TO  
MODIFY THE AUTOMATIC STAY

Upon consideration of the Motion of Creditor Liberty Industries, Inc. ("Liberty") to modify the automatic stay in effect with respect to debtor New England Compounding Pharmacy, Inc. d/b/a New England Compounding Center ("NECC") pursuant to 11 U.S.C. § 362(d), Fed. R. Bankr. P. 4001(a)(1), 9006(d)-(f), 9014, and MLRB 4001-1(a) and 9013-1, to permit Liberty to seek discovery from NECC and to assert allegations against NECC as a nonparty in Liberty's answers to complaints as required in the jurisdictions in which it is defending against claims based on injuries alleged by tort creditor claimants of NECC [Dkt. No. 870] in those current and future actions pending in jurisdictions ("Civil Actions") which permit a defendant to defend itself by raising the fault of a nonparty for the purposes of reducing the percentage of fault attributable to that defendant (the "Comparative Fault Defenses"), and consideration of the Chapter 11 Trustee's Objection to Liberty Industries, Inc.'s Motion to Modify the Automatic Stay [Dkt. No. 937], and this Court's having jurisdiction over the motion, and the relief requested therein in accordance with 28 U.S.C. § 1334; and consideration of the motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. § 1408 and 1409; and due and

proper notice of the motion having been provided; and it appearing that no other or further notice need be provided; and after hearing on oral argument before me to resolve any objections; it is


1. ORDERED that the automatic stay now in effect, to the extent it may be construed to prevent Liberty from seeking discovery from NECC, is hereby modified to permit Liberty to seek limited written and oral discovery from NECC in the forms allowed by the Federal Rules of Civil Procedure in the Civil Actions, including but not limited to, deposition by oral examination, deposition by written questions, interrogatories, and requests for production and inspection which shall be limited solely and exclusively to permit Liberty to defend itself and reduce its potential liability in the Pending Actions based upon the Comparative Fault Defenses (collectively "Limited Discovery"); and it is further
2. ORDERED that Liberty may assert allegations against NECC as a nonparty responsible in whole or in part for injuries allegedly sustained by plaintiffs only in the Civil Actions, and solely for purposes of the Comparative Fault Defenses, provided that:
  - a. Neither NECC nor Paul D. Moore, as the duly appointed chapter 11 trustee of NECC in the above-captioned bankruptcy case ("Trustee"), is named as a party in any judicial proceeding by Liberty;
  - b. Judgment does not enter, and damages are not calculated, with respect to NECC;
  - c. Nothing in any judicial proceeding (other than in this Court) shall operate as an allowance or disallowance of any claim Liberty asserts or may hereafter assert in this bankruptcy case; which allowance or disallowance shall remain within this Court's exclusive jurisdiction; and

- d. any allocation of fault to NECC in any judicial proceeding (other than a judicial proceeding in this Court) shall only be for purposes of reducing Liberty's potential liability due to the Comparative Fault Defenses, and shall not be given preclusive effect with respect to the calculation, liquidation, allowance or disallowance of any claim Liberty asserts or hereafter may assert in this bankruptcy case, all matters relating to such calculation, liquidation, allowance or disallowance shall remain within the exclusive jurisdiction of this Court; and it being further
3. ORDERED, that the relief awarded pursuant to this Order is solely to permit Liberty to assert and prove its right to reduce its potential liability in the Civil Actions due to the Comparative Fault Defenses, and nothing in this Order alters the automatic stay to permit, or otherwise authorizes Liberty to pursue, the prosecution of any claims for affirmative relief against NECC or against the Trustee; and it being further
4. ORDERED that the relief granted by this Order is limited to modifying the automatic stay as set forth above, and is not in any manner determining or implying that any Limited Discovery sought by Liberty is appropriate or that the Trustee is required in any fashion to comply with any Discovery request propounded by Liberty. Without limiting the generality of the immediately preceding sentence, it is further ORDERED that the Trustee shall retain all rights to object to or otherwise limit, oppose or resist any and all of the Limited Discovery sought by Liberty, and nothing in this Order is intended to be, or shall be construed as, (i) authorizing Liberty to conduct the Limited Discovery, or determining that Liberty is entitled to any Limited Discovery whatsoever pursuant to the applicable Rules of Civil Procedure, against NECC, the Trustee or any other entity, (ii)

directing the Trustee to respond to any Limited Discovery propounded by Liberty or (iii) waiving any privileges or immunities of the Trustee or NECC's bankruptcy estate with respect to any Limited Discovery; and it is further

5. ORDERED that this Court shall retain jurisdiction with respect to all matters arising from or relating to the this Order, including, without limitation, relating to the allowance, disallowance, classification and subordination of any claim Liberty asserts or hereafter may assert in this bankruptcy case.

Dated: July 31, 2014

  
The Honorable Henry J. Boroff  
UNITED STATES  
BANKRUPTCY JUDGE